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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 301

LOREN J. PIKE, as Supervisor of Inspection,
Arizona Fruit and Vegetable Standardization Service,
Appellant,

versus

BRUCE CHURCH, INC., a California corporation,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

REPLY TO MOTION TO DISMISS OR AFFIRM

Most of the contentions contained in the appellee's Motion to Dismiss or Affirm have already been dealt with by the Jurisdictional Statement. Accordingly, the purpose of this Reply Brief will be to dispel possible confusion with regard to two dispositive matters:

I. This case is not governed by authorities of this Court such as *Baldwin v. Seelig,* 294 U.S. 511 (1935), *Toomer v. Witsell,* 334 U.S. 385 (1948), and *Johnson v. Haydel,* 278 U.S. 16 (1928), because the State of Arizona has made no attempt to insulate itself from any interstate competition.

II. Under this Court's holdings in *Federal Compress and Warehouse Co. v. McLean,* 291 U.S. 17 (1934) and *Chassaniol*

v. City of Greenwood, 291 U.S. 584 (1934), the regulation in the instant case comes into play prior to the time that the goods have moved in interstate commerce.

I.

A fundamental error underlying the appellee's position is the persistent assumption that the State of Arizona, through the appellant, is requiring the appellee to construct a packing shed in the State of Arizona. Proceeding from this premise, the appellee asserts that this case falls in the same category as *Baldwin v. Seelig,* 294 U.S. 511 (1935), *Toomer v. Witsell,* 334 U.S. 385 (1948), *Johnson v. Haydel,* 278 U.S. 16 (1928), and other cases which stand for the proposition that no state can isolate for itself any segment of business arising within its borders, free from competition from other states.

The State of Arizona has imposed no such requirement, and the principle of *Baldwin v. Seelig* and similar cases is inapplicable to the facts of this case.

Arizona's Fruit and Vegetable Standardization Act prescribes standards for uniformity of pack and quality of produce shipped from this State. To comply with the statute, cantaloupes must be packed in standard containers and must be "fairly uniform in size." A.R.S. § 3-503 A. In addition, all cantaloupes in each container must be "of one variety or similar varietal characteristics." *Ibid.* Obviously, there is no way that the appellant can determine that all cantaloupes in each container are of "one variety or similar varietal characteristics," or that they are "fairly uniform in size," or even that they are packed in standard containers unless he can inspect the cantaloupes in their containers. Moreover, even as to quality requirements, *e.g.,* requirements that the cantaloupes "shall be mature but not overripe, fairly well netted, and free from mold, decay and insect damage . . ." A.R.S. § 3-503 A, the inspection, in the language of the attorney for the appellee, "best takes place at the stage of the sorting, when the cantaloupes are

sorted, and at the present time this can most conveniently and efficiently be done in the packing shed." Transcript, 70/24-71/2.

In summary, therefore, matters of uniformity and compactness of pack as required by the Act can only be ascertained by inspection of the cantaloupes in the pack, and inspection for quality defects can most efficiently and effectively be accomplished at the sorting and packing stage. It follows that inspection of the product in the pack lies at the heart of the Standardization Act. Unless he can inspect the product in the pack, the appellant has no way of ascertaining that packing standards, including uniformity of color, variety, etc., and standards of quality have been complied with.

The parties have stipulated that "cantaloupes grown at Parker are considered ordinarily to be of a higher quality than those grown in other districts in Arizona." Stipulation, 17/11-13. Arizona's Standardization Act requires that all containers of fruits and vegetables "shall bear in plain sight and in plain letters on the outside thereof" the "name of the orchard or farm where the fruit or vegetable was produced." A.R.S. § 3-499 B.1. In keeping with the overall purpose of the Standardization Act to enhance the long-run reputation of Arizona fruits and vegetables in interstate and foreign commerce, Arizona is entitled to have interstate buyers know of the fact that these high-quality Parker melons were produced in the State of Arizona. There is no way the appellant can assure that this will be accomplished if the melons are packed in California, and indeed, California law apparently has no requirement that the orchard or farm of origin be designated.[1]

At all turns, therefore, inspection of the pack is indispensable to carrying out the purposes of the Standardization Act. It is immaterial to the appellant when, where, or how the cantaloupes

[1]The appellee's agent, Mr. Gipe, testified at his deposition that California has no requirement that the field of origin be designated on the crate. Gipe Deposition, 27/1-8.

are packed; so long as the appellant can inspect the cantaloupes in the pack, he can discharge his responsibilities under the Standardization Act.

The packing shed comes into the picture solely because of the fact that, as testified by the appellee's agent, Mr. Gipe, it is not practical to pack cantaloupes in the field on a commercial basis. Gipe Deposition, 10/8-13.

The sole concern of the appellant is that he be able to inspect cantaloupes in the pack for quality, uniformity of size, uniformity of varietal characteristics, designation of farm of origin, etc. The necessity of a packing shed enters into the picture not because of any requirement of the appellant or of State law, but solely because of the fact that cantaloupes, unlike certain other fruits and vegetables, can be packed only in a packing shed.

The real issue, therefore, is whether the specification of standard containers, standard packs, and standards of quality for produce moving *out of* a state, as opposed to produce coming *into* a state, is a matter of legitimate state concern. That issue has already been resolved by this Court in *Sligh v. Kirkwood,* 237 U.S. 52 (1915), cited in our Jurisdictional Statement, and by *Pacific States Box & Basket Co. v. White,* 296 U.S. 176, 56 S.Ct. 159 (1935), cited by the Amicus Brief of Western Growers Association. Involved in the *Pacific States Box & Basket Co.* case was an Oregon statute entitled "Standard Containers for Fruits and Vegetables." That statute vested in the State Director of Agriculture the power to fix and promulgate "official standards for containers of horticultural products" "in order to promote, protect, further and develop the horticultural interests" of the State of Oregon. 296 U.S. at 178. The statute further provided that after a standard container had been prescribed, it was unlawful for anyone "to pack for sale or transport for sale, or sell, the article in a container unless it conforms to the standard." 296 U.S. at 179. The order at issue in that case prescribed that strawberries

and raspberries be packed only in certain containers known as "hallocks." The plaintiff manufactured a type of container other than a hallock, and challenged the constitutionality of the statute on commerce clause and other grounds. This Court, in a unanimous opinion written by Mr. Justice Brandeis, upheld the constitutionality of the statute. The following quotations taken from Mr. Justice Brandeis' opinion clearly establish the legitimacy of state standardization acts:

> The power of a state to prescribe standard containers in order to facilitate trading, to preserve the condition of the merchandise, to protect buyers from deception, or to prevent unfair competition, is conceded. Such regulation of trade is a part of the inspection laws; was among the earliest exertions of the police power in America; has been persistent; and has been widely applied to merchandise commonly sold in containers. See Turner v. Maryland, 107 U.S. 38, 51-54, 2 S. Ct. 44, 27 L.Ed. 370. Latterly, with the broadening of the field of distribution and the growing use of containers in the retail trade, the scope of the regulation has been much extended, 296 U.S. at 181.
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> Whether it was necessary in Oregon to provide a standard container for raspberries and strawberries; and if so, whether that adopted should have been made mandatory, involve questions of fact and of policy, the determination of which rests in the legislative branch of the state government. The determination may be made, if the Constitution of the state permits, by a subordinate administrative body. With the wisdom of such a regulation we have, of course, no concern. We may inquire only whether it is arbitrary or capricious. That the requirement is not arbitrary or capricious seems clear. That the type of container prescribed by Oregon is an appropriate means for attaining permissible ends cannot be doubted. *Id.* at 182.

II.

The central fact in this Court's unanimous holdings in *Federal Compress and Warehouse Co. v. McLean,* 291 U.S. 17 (1934),

and *Chassaniol v. City of Greenwood*, 291 U.S. 584 (1934) — a fact which the appellee overlooks — is that the cotton involved in those cases was compressed only *after* shipping orders had been received. Mr. Justice Stone's opinion in the *McLean* case states as follows:

> Upon shipping orders given by the holders of the warehouse receipts, appellant compresses the cotton into bales of standard weight and size, suitable for shipment, and delivers them to the rail carrier for interstate transportation. 291 U.S. at 20.

McLean and *Chassaniol* upheld the tax upon both the warehousing function and also the compressing function. The basis of those decisions was that neither of these functions was insulated from state regulation by the commerce clause because, "ginning cotton, transporting it to Greenwood, warehousing, buying, *and compressing it there,* are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce." *Chassaniol v. City of Greenwood,* 291 U.S. 584, 587 (1934). (Emphasis added.)

Therefore, the fact that cantaloupes have a shorter storage period than cotton is immaterial, since the compression involved in *McLean* and *Chassaniol* occurred only after shipping orders had been received.[2] For purposes of determining the constitutionality of an asserted burden on interstate commerce, the commerce clause does not come into play where the state regulation is imposed at a stage prior to shipment of the goods in interstate commerce.

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[2]For reasons set forth in the Jurisdictional Statement, we do not believe that *Shafer v. Farmers Grain Co.,* 268 U.S. 189 (1925), and *Lemke v. Farmers Grain Co.,* 258 U.S. 50 (1922), are inconsistent with the rule that for purposes of determining commerce clause constitutionality of state regulations, the commerce clause is inapplicable to regulations applied to functions which precede shipment and are merely preparatory to shipment. However, if there is any inconsistency between *Lemke* and *Shafer,* on the one hand, and *McLean* and *Chassaniol,* on the other, the latter must prevail since they were later in time.

CONCLUSION

The growing of fruits and vegetables, and the shipment of fruits and vegetables in interstate and foreign commerce, constitute one of the leading industries of the State of Arizona.

The most important legislation dealing with this major Arizona industry is the Fruit and Vegetable Standardization Act. The parties have stipulated to the benefits that this Act has accorded the growers of Arizona fruits and vegetables in enhancing the reputation of Arizona produce.

The decision of the lower court makes it impossible for the appellant to carry out his responsibility of enforcing the Standardization Act, so that the fundamental purposes of the Act itself are threatened.

It is respectfully submitted that the issues in this case are sufficiently important to warrant at least one appellate review of the lower court's decision.

Respectfully submitted,

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